



FEDERAL ELECTION COMMISSION
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AGENDA ITEM
For Meeting of: 04-03-03

SUBMITTED LATE

MEMORANDUM

DATE: April 2, 2003

TO: The Commission

FROM: Commissioner Michael E. Toner *MT*

RE: Proposed Amendments to Agenda Document 03-20 Public Financing of
Presidential Candidates and Nominating Conventions: Draft Notice of Proposed
Rulemaking

Attached please find amendments that I am considering offering on April 3, 2003
to amend Agenda Document 03-20.

Edits to Agenda Document 03-20

Page 4, lines 7-8

- insert comma after "publicly funded candidates"
- insert after "including" the phrase "questions concerning candidate"
- insert comma after "lists"
- insert "(including list exchanges and list rentals)" after "lists" and before inserted comma

Page 13, line 3

- Strike "That" and replace with "The latter"

Page 20, line 14

- Insert comma after "private funds"
- Insert after comma the phrase "with separate contribution limits for contributors"

Page 26, line 14

- Insert the following after "allocation":
Because the documentation of the primary and general election committees' allocation must be reviewed and disputes may arise about whether committees have provided sufficient documentation to support their proposed allocation, this alternative could prolong the audit process and use the resources of the Commission and audited committees.

Page 48, line 13

- Insert period after "NOCO"
- Strike "but could not be" and replace with the following language so that it reads:
The Commission seeks comment on whether or not such presumptively redesignated contributions could be submitted for matching funds? Would permitting such presumptively redesignated contributions to be submitted for matching funds be inappropriate given that they were made for a different election and the contributor arguably lacked the donative.....

Page 50

- Line 23: strike "on the basis of" and replace with "for"
- Line 23: insert after "contributions" the phrase "from individuals"

Page 51

- Line 7: insert after "those" the word "individuals"

Page 53, line 5

- Insert comma after "salaries"
- Insert after the comma the phrase "including privately financed presidential candidates,"

Page 53

- Line 12: strike "However" from the end of line 12
- Move the language starting on page 53, line 13 and continuing to page 53, line 16 ending with "Id." to page 53, line 9 after "2002)."
- Lines 16-19: strike beginning with "Nevertheless, nothing in the amended personal use rules..."

Page 54

- Line 13: strike "any"

Page 55

- Line 7: strike "would" and replace with "could"

Page 62

- Line 4: insert "allocable" after "any"
- Line 6: insert "allocable" after "such"
- Line 19: insert after 9008.52 the phrase "are not allocable contributions under FECA and"

Page 63

- Line 8: insert after 9008.53 "are not allocable contributions under FECA and"

Page 64

- Lines 1-2: strike "which constitute" and replace with "which under current Commission regulations are not allocable contributions within the meaning of FECA and therefore are treated as"

Page 67

- Line 20: strike "is" and replace with "are"

Page 68

- Line 12: strike "Similarly,"
- Line 12: insert "also" after "BCRA"
- footnote 4: strike "In connection with any election other than an election for Federal office"

Page 70, line 8

- Insert after "subject" the phrase "as a matter of law"

Page 73, line 14

- Insert after "per se" the phrase "as a matter of law"

Page 74, line 16

- Strike comma after "expenses and replace with a semi-colon
- After semicolon, insert "as such,"

Page 77

- Line 4: insert after "candidates" the phrase "acting on their behalf"
- Line 17: insert "as a matter of law" after "apply"
- Line 17: strike "of" and replace with "solicited, raised, and spent by"

Page 78, line 21 through page 79, line 9: Strike

Page 80

- Line 16: insert before "host" the phrase "The Commission has historically treated"
- Line 16: strike "are" and replace with "as"
- Line 16: insert "that are" after "organizations"
- Line 18: after citation insert "As is noted above, the Commission is seeking comment on whether this historical treatment of host committees and municipal funds is appropriate."

Page 81

- Line 2: at the end of the sentence insert "The Commission seeks comment on what impact this BCRA statutory provision has, if any, on the Commission's treatment of host committees and municipal funds."

Page 83

- Line 3: insert "arguably" after "9008"
- Line 9: insert "arguably" after "would"
- Line 9: insert after "not" the phrase ", as a matter of law,"

Page 87

- Line 14: insert after "events," the phrase "which are frequently described as hospitality events,"
- Line 15: strike "away from" and replace with "outside"
- Line 16: insert after venue "but often in close proximity to it."
- Beginning Line 20: insert language so that the sentence reads
The Commission seeks comment on whether BCRA requires that private hospitality events held by corporations, labor unions, and other organizations in the convention city during the convention are subject to regulation and, if so, on what basis? Does it make any difference whether federal candidates or officeholders or party officials or their agents (acting on their behalf) are invited to, appear, are recognized, or speak at such events?

Page 91, line 1

- insert the following:

The Commission seeks comment on whether the examination and audit authority of the Commission outlined in 11 CFR 9008.54, which mandates audits of convention host committees without cause, has an adequate statutory basis under FECA.

Host committees are the only non-publicly funded committees that are subject to an automatic audit by the Commission. Convention committees are also subject to automatic audits under 11 CFR 9008.11 no later than December 31 of the year the convention was held and may, at any time, be subject to other examinations and audits as the Commission deems necessary. However, convention committees receive millions of dollars of public funds and the Commission's audit authority helps insure that those public funds are lawfully spent. The audit authority provided to the Commission under 11 CFR 9008.11 is also statutorily based in 26 U.S.C. 9008 and 9009.

The Commission seeks comment on whether the host committees should be subject to automatic audits under 11 CFR 9008.54?

Page 96

- Line 4 insert the following:

Alternatively, the Commission seeks comment on whether it should refine the current list of examples. Under this alternative, the Commission would retain the general definition of "convention expenses" in 11 CFR 9008.7(a)(4). What changes should be made to the list of examples? Should any be deleted? Should other examples be added?

Page 102, line 22: insert after "funds?" the following language:

If the Commission adopted this proposal, would it make it more feasible for smaller and mid-size cities, whose corporate and business presence may not be as great as the nation's largest cities, to successfully stage a national convention?

Page 108, line 14 insert:

- Convention Legal and Accounting Fund (CLAF)

The Commission is proposing that convention committees be permitted to establish separate legal and accounting funds ("CLAF") to pay for the legal and accounting services related solely to compliance with the Federal Election Campaign Act and the Presidential Election Campaign Fund Act. See proposed 11 CFR 9008.8(b)(4)(ii)(B). Under this proposal, the funds raised by the CLAF would be required to be deposited in a separate account and would have to comply with the limitations and prohibitions of 11 CFR parts 110, 114 and 115. Contributions to the CLAF could not exceed \$25,000 per person, and \$15,000 per multi-candidate political committee in any calendar year.

If proposed §9008.8(b)(4)(ii)(B) were adopted, the payment by the CLAF of compensation to any individual or entity for legal and accounting services to ensure compliance with the FECA and the Fund Act and rendered to or on behalf of the convention committee in connection with the presidential nominating convention or convention-related activities would not be considered an expenditure and would not count against the expenditure limitations of this section. The convention committee would report contributions received to pay for legal and accounting services on a separate Schedule A, and would report payments for legal and accounting services on a separate Schedule B.

The Commission notes that its current regulations permit convention committees some flexibility in this area. National party committees, under 11 CFR 9008.8(b)(4), may raise contributions for convention related legal and accounting costs subject to national

party committee limits for individuals and multi-candidate committees and otherwise in compliance with 11 CFR parts 110, 114 and 115. Furthermore, the regulations do not require that a separate account be established for legal and accounting receipts and expenditures. The current regulations also exempt payments made for legal and accounting expenditures from the expenditure limitations of § 9008.8. Nevertheless, the establishment of a separate convention legal and accounting fund would provide several beneficial aspects for the convention committee. The CLAF would have a separate contribution limit from the National committee's limit but subject to the same limitations and restrictions of the National committee. Contributions raised for the CLAF and spent for convention related legal and accounting costs would free up convention grant funds to cover political activities rather than being used to pay lawyers and accountants. And finally, funds raised for the CLAF would help ensure that sufficient resources were available to the convention committee for legal and compliance obligations. The Commission seeks comment on all issues raised by this proposal.

Page 108

- Line 20: delete "flexibility to" and insert after "have the" the phrase "legal authority under the Administrative Procedures Act or otherwise"
- Line 22: insert after "conventions?" the phrase "If the Commission took either of these actions, would the Commission be essentially suspending BCRA as it applies to convention financing until 2008 and, if so, does the Commission have the power legally to do so?"

Page 109

- Line 8: insert after "1999)." the phrase "If the Commission concludes that BCRA as a matter of law requires certain regulatory changes, and that therefore its existing regulations are no longer consistent with the statutory law, does the Commission nevertheless have the legal authority to decline to modify existing regulations or to postpone the effective date of new regulations?"

Page 127, line 3 insert:

- §9008.8
(b)
(4)(ii)(B) The contributions raised by a Convention Legal and Accounting Fund to pay for legal and accounting services must comply with the limitations and prohibitions of 11 CFR parts 110, 114 and 115 and shall be deposited in a separate account. These contributions shall not exceed \$25,000 per person, and \$15,000 per multi-candidate political committee in any calendar year.